IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2003

C O R A M

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.19818 OF 1999 and WRIT PETITION NO. 19819 OF 1999

Ramesh Enterprises Ltd.,
94 Ramamurthy Road,
Virudhunagar-626 001
rep. by its Managing Director ... Petitioners in
both petitions
-Vs-

1. ESI Corporation,
rep. by its Deputy Director,
Sub-Regional Office (Madurai),
13 Old Post Office St,
Thallakulam
Madurai-625 001.

2. ESI Inspector
30A Malapallam,
Virudhunagar-626 001. ... Respondents in
both petitions

!For Petitioner ... Mr.Ravindran
for T.S. Gopalan & Co

^For Responddents ... Mr.G.Desappan

Prayer: This Writ Petition is filed under Article 226 of The Constitution of India for issuance of a Writ of Prohibition for the reliefs as stated therein.

:O R D E R

The petitioner seeks for the issuance of Writ of Prohibition, to prohibit the respondents from enforcing the provisions of the Employees' State Insurance Act (In short, 'the ESI Act') against the petitioner.

2. The petitioner is having a Factory at Virudhunagar, where raw coffee seeds are cured which involved the process of drying of coffee beans, removing husks, cleaning and grading of coffee seeds. According to the petitioner, it is a factory registered under the provisions of the 'Factories Act'. The petitioner claims exemption from the provisions of the ESI Act by virtue of the definition of 'Seasonal Factory' under Section 2(19A) of the

said Act.

3. Section 2(19A) of the ESI Act, reads as under:
"Section 2. Definitions.
19(A). "Seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing process, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid process and includes a factory which is engaged for a period not exceeding seven months in a year-
(a) in any process of blending, packing or repacking of tea or coffee; or
(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazettee, specify;"

4. It is stated that on 19-1-1998, the Inspector of the respondents' Corporation at Virudhunagar visited the petitioner's factory based on which a notice was issued on 19-11-1998 seeking to cover the petitioner's factory with effect from 1-4-1998 provisionally. The petitioner sent a reply dated 4-12-1998 contending that by virtue of the application of Section 2(19A) of ESI Act, the Act is not applicable to the petitioner's factory. Thereafter, when the respondent insisted by their subsequent communications, the last of which was dated 30-10-2000 that the petitioner should cover its establishment under the ESI Act, the petitioner has come forward with the present Writ Petition.

5. The respondents have filed a counter affidavit, contending that the claim of the petitioner that it is engaged in the manufacture of coffee is not admitted, that it is for the petitioner to establish the said fact by letting in acceptable evidence, that according to the authorities of the respondents, the petitioner's factory was engaged only in the process of blending and packing of coffee and marketing them in the State of Karnataka, particularly in Bangalore city, where, its Head Office is located and that the petitioner's factory is not engaged in curing raw coffee seeds and drying coffee beans, as well as, the other activities of removing husks, cleaning and grading of coffee seeds etc. It was further contended that no material was placed before the Inspecting Authorities in support of the above said claim. The respondent, would therefore, contend that in view of the fact that the petitioner's factory was engaged only in blending operations with packing and repacking activity, it would come under the extended definition and since the operation of the factory is carried on beyond seven months, it looses the character of 'seasonal factory'. It is, therefore, claimed that the writ is not maintainable at the stage where the show cause notice was issued and also on the ground that the petitioner has got an effective alternative remedy under Section 75 of the Act before the ESI's Court.

6. While the learned counsel appearing for the petitioner placed reliance upon the Judgment of the Hon'ble Supreme Court reported in 199 2(1) LLJ 287 (REGIONAL DIRECTOR, E.S.I.C. Versus HIGHLAND COFFEE WORKS OF P.F.X.SALDANHA & SONS & ANOTHER), Mr.G.Desappan, learned counsel appearing for

the respondent by referring to the Division Bench judgment of the Karnataka reported in 1977(1) LLJ 178 (REGIONAL DIRECTOR, E.S.I.C., BANGALORE versus HIGH LANDS COFFEE WORKS, ETC.ETC.) which was confirmed by the Hon'ble Supreme Court in its Judgment reported in 1992 (1) LLJ 287 as well as another Division Bench Decision of the Karnataka High Court reported in 1982(2) LLJ 395 (E.S.I.C., BANGALORE versus BROOKE BOND INDIA LTD.), contended that on a conspectus reading of the above referred to decisions, when it is the case of the respondent Corporation that the petitioner factory is not engaged in the manufacture of coffee, but was only engaged in the activity of blending, packing or repacking of coffee as an independent activity, there is no scope for applying the ratio of the above referred to judgments in abstract in order to straight away exclude the operations of the provisions of the Act.

7. Having heard the learned counsel for the parties and on a perusal of the above referred to judgments, I find that in the case of ' High Lands Coffee Works' which is covered by the Division Bench judgment of the High Court of Karnataka reported in 1977(1) LLJ 178 (REGIONAL DIRECTOR, E.S.I.C., BANGALORE versus HIGH LANDS COFFEE WORKS, ETC. ETC.) which was also confirmed by the Hon'ble Supreme Court in the judgment reported in 1992(1) LLJ 287 (REGIONAL DIRECTOR, E.S.I.C. Versus HIGHLAND COFFEE WORKS OF P.F.X.SALDANHA & SONS & ANOTHER),was a case which arose out of an order that emanated from the Employees State Insurance Court, where after a detailed enquiry, the Employees State Insurance Court, Bangalore accepting the stand of the employer, held that the Employer's factory was engaged in ' coffee curing' which involved the process of 'dehusking, cleaning, grading, garbling and packing raw coffee, that the said factory was 'seasonal factory' within the meaning of Section 2(12) of the Act as it stood prior to its amendment and that even after the amendment by Act 44 of 1966, the position remained unaltered and therefore, the factory of the employer in that case continued to be a 'seasonal factory' and thereby excluded from the application of the provisions of the Act.

8. In the Judgment reported in 1982(2) LLJ 395, (E.S.I.C., BANGALORE versus BROOKE BOND INDIA LTD.),here again, when the E.S.I. Corporation wanted to cover the factory of of M/s.Brook Bond India Limited, the matter went before the E.S.I. Court, where the stand of the employer was accepted based on the materials placed before it and following the earlier Division Bench Judgment of the High Court of Karnataka reported in 1977(1) LLJ 178, (REGIONAL DIRECTOR, E.S.I.C., BANGALORE versus HIGH LANDS COFFEE WORKS, ETC.ETC.) = (1976 (2) Karnataka Law Journal 404) in the present case also, the order of the E.S.I.Court was up held.

9. In the affidavit filed in support of this writ petition, the petitioner would claim that in its factory at Virudhunagar, raw coffee seeds are cured and the process involves drying of coffee beans, removing husks, cleaning and grading of coffee seeds. Mr.S.Ravindran, learned counsel appearing for the petitioner by drawing the attention of this Court to the visit note of the second respondent dated 19.11.98 contended that even as per the said note, the petitioner's factory was engaged in manufacturing coffee powder and for carrying out the said manufacturing activity, roasting machine, coffee grinder, coffee chickery blender, packing machines were used with the aid of power. The learned counsel would therefore contend that even going by

the inspection report of the second respondent apart from blending activity, the petitioner was also using other machineries viz., roasting machine and coffee grinder and therefore, it will have to be held that in the petitioner's factory the full fledged activity of the manufacture of coffee was being carried out.

10. According to the learned counsel, in view of the said factual position, nothing further was required to establish that the petitioner was engaged in the manufacture of coffee and when the activity of blending and packing was part of the said manufacturing activity of coffee, the main section 2 (19A) of the Act gets attracted, in which event the petitioner's factory would fully satisfy the definition of " seasonal factory" in order to exclude its coverage.

11. As far as the legal position viz., that when blending or packing activities as part of the main activity of coffee is carried on, that by itself would be sufficient to bring the said factory within the definition of "seasonal factory" as defined under Section 2 (19-A), is not in controversy in the light of the decisions referred to above. But, the question is whether as a matter of fact the petitioner' s main activity in its factory is the whole process of manufacture of coffee or was it engaged in the activity of blending and packing of coffee alone.

12. On this factual aspect, the only available material in this writ petition is the averment contained in the petitioner's affidavit in paragraph-1 and the reliance placed upon the second respondent's visit note dated 19.11.1998. It is relevant to point out that in the counter affidavit of the respondents, this factual aspect, is disputed. It is the specific case of the respondents that in the petitioner's factory, the main activity is the process of blending and packing of coffee alone for the purpose of marketing them in the State of Karnataka. There is also a specific denial of the petitioner's claim that it was engaged in the manufacture of coffee and in that process, it was carrying on the activity of curing of raw coffee seeds or drying of coffee beans and such other activities viz., removal of husks, cleaning and grading of coffee seeds.

13. Therefore, going by the available pleadings, and the materials on record, I am afraid that any definite conclusion can be drawn to the effect that in the petitioner□s factory, the manufacture of coffee by involving the various process of curing of coffee seeds or drying of coffee beans or removal of husks and other activities of cleaning, grading etc., were being carried on. By saying so, it should not be taken that I have reached a definite conclusion to the effect that the petitioner is not engaged in the manufacture of coffee. I only state that with the available material on record and the averments of the petitioner and the counter affidavit of the respondents, it is not possible to render any final conclusion that in the petitioner□s factory, manufacture of coffee is being carried on right from the stage of curing of coffee seeds to the final activity of packing of coffee for being marketed. Unless such a conclusion can be indisputedly reached, as rightly contended by Mr.G. Desappan, learned counsel for the respondents the application of the ratio of the judgment of Karnataka High Court as confirmed

by the Hon□ble Supreme Court reported in 1992 1 LLJ 287 (REGIONAL DIRECTOR, E.S.I.C. Vs HIGHLAND COFFEE WORKS OF P.F.X. SALDANHA & SONS & ANOTHER) cannot be made.

14. The petitioner has approached this Court at a stage, when the respondents have issued notices dated 16.12.98, 27.4.2000 and 30.10.200 0. When the petitioner disputes the very move of the respondents for covering the petitioner's factory by contending that it is a " seasonal factory" falling within the definition of 2(19-A), in fitness of things, the petitioner can validly raise a dispute by approaching the appropriate Employees State Insurance Court by filing necessary application under Section 75 of the E.S.I Act. If such a course is adopted, the petitioner can validly explain the position to the E.S.I Court as to how the various activities carried on in its factory would bring the said factory within the definition of Sec.2 (19-A) in order to exclude its coverage. When such alternate remedy is also available to the petitioner, it is but proper the petitioner exhaust the said remedy in order to find a lasting solution.

15. Having regard to my above said conclusion, there is no scope for issuing a writ much less a writ of prohibition as asked for by the petitioner in this Writ petition. It is open to the petitioner to approach the Employees State Insurance Court under Section 75 of the E. S.I Act for redressal of its grievances. In the event of the petitioner approaching the E.S.I Court within three months from the date of receipt of copy of this order, the issue as to whether the petitioner's factory will come within the definition of seasonal factory as defined under Section 2(19-A) shall be decided in the first instance before going into the other aspects of the claims of the respondents. The Writ Petition however fails and the same is dismissed. No costs.

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Index:yes
Web site: yes
To
1. ESI Corporation,
rep. by its Deputy Director,
Sub-Regional Office (Madurai),
13 Old Post Office St,
Thallakulam
Madurai-625 001.

2. ESI Inspector
30A Malapallam,
Virudhunagar-626 001.

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